2: Hockings E-4,5 (1962-1977) 1980
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Headmen and Administrative Boundaries

631 As we have seen, the Nilgiri Plateau is divided into four areas, Todana:ḍu, Me:kuna:ḍu, Poraṅga:ḍu and Kundena:ḍu.[1] In each of these divisions are several communes,[2] each made up of from one to forty contiguous villages. These villages may belong to any one of the seven plateau phratries, and one of the villages, not necessarily the largest or even of the highest phratry, has permanent precedence and gives its name to the entire commune. Its headman is also head[3] of the entire commune; under him are the headmen[4] of all the other villages. The divisional headman[5] is (643) a hereditary position in one family of a chosen village. From time immemorial the village headman of Tu:ne:ri, in Todana:ḍu, has been paramount chief[6] of the entire Badaga community.[7] Because of the extent of their duties the divisional headmen and the paramount chief do not also serve as headmen at all other levels. (428) All of these offices are normally inherited patrilineally, save when the eldest son is deemed unfit and another relative is chosen by the council to replace him.

• 692 (693) At each of these levels—village, commune, division and entire community—the relevant headman can call together a council (*manta*) of respected men to judge disputes. Every case has to pass up this hierarchy of councils, so that only when lower councils have failed to solve them satisfactorily do the most complicated land and marriage disputes and murder cases reach the paramount council. A dissatisfied disputant may appeal a council's decision to the next higher level of council, but high-level headmen check that a case brought to them has first passed through the lower-level councils. Badaga law has the unusual provision that if a higher-level headman considers the judgment given at a lower level to be in error he can fine the headman responsible. This was in the past an effective check against favouritism.

Procedure

692 693 (622) In a dispute between two parties from the same village their headman called a council of the heads of each household, one of whom would be his deputy (*gaundike*). Where litigants came from neighbouring villages the case would first be heard by the commune council, which was made up of all its village headmen.

2: Hockings E-4,5 (1962-1977) 1980
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622 shield the wrong-doers, but even to aid in the perpetration (Grigg, 1880, 411; Francis, 1908, 295).

661 The power and influence of the *mūnegar* was vastly greater in the last century than it now is: '... when he visited any village 622 within his jurisdiction, the monegar had the privilege of having the best women or maids of the place to share his cot according to his choice'.[14] Girls were only one kind of bribe that might secretly be used to secure his sympathies: clothes and feasting were much commoner. The autocracy of these local officials is well illustrated by 'stories ... of a Monegar of one village who ordered an individual who had disobeyed his orders to be covered with a slab of stone' (Natesa Sastri, 1892, 831–832).

623 Just as alien as the British notion of a headman's role was the (657) idea of electing a council; and yet a supposedly elected *panchayat*[15] became the official organ of local government shortly after the First World War. (Its duties today are to provide certain facilities, notably the up-keep of roads and paths, water supply, community radio, maintenance of land records and birth and death registers, and the supply of information about governmental (625) activity.) Despite the appearance of village *panchayats* and of a state police force in some villages, the organization of celebrations (178) and the settlement of disputes have remained very much in the (622) hands of the traditional headman, his festival committee and his (692) council. Criminal cases should be reported to the police and are usually handled in a lawcourt, but civil and petty criminal cases can either be settled by the village council or by an official *panchayat* court.[16]

692 This multiplicity of procedures exposes the Badagas to three different legal systems: their own indigenous one, still influential in establishing precedents; the present-day Badaga village council which settles disputes according to a majority opinion (an opinion voiced, however, by the headman and modified by the knowledge that the case may then be taken, together with the decision, before a court of law); and finally the increasingly popular hierarchy of government law courts.

THE PRESENT AMBILEGAL SITUATION

With such a confusion of courts, officials, regulations and legal options, how does a Badaga choose which medium to use? The prime consideration is apparently not the seriousness of the

2: Hockings E-4,5 (1962-1977) 1980
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692 complaint but the good repute of a man's village. Even recent cases of murder and suicide were handled entirely by the traditional Badaga council in the village where the acts were committed. That procedure contravenes Indian law, for any such criminal offences should automatically be reported to the police and then examined in a magistrate's court.[17] However, whether siding with the victim, the malefactor or neither, Badagas prefer to settle such matters through the headman and his council, thus protecting the village name from the dishonour of a police investigation and loose gossip. For the same reason they also try to stop a case from reaching the higher levels of their own traditional councils.

691 692 Despite this restrictiveness, it is now very common for a case which has already been judged by the village council to be taken to a lawcourt by whichever side has lost; hence we may characterize the present procedure as 'ambilegal'. There are two factors which may prevent the loser from appealing his case to a magistrate: one is the high cost of solicitors and of bribing various petty officials; the other is the common knowledge that the decision of the village council, though often not very impartial, can be used as evidence in court, whereupon in something like '98% of cases' (in the estimate of one experienced informant) the magistrate simply reiterates this decision.

Although he usually upholds the village council's decision, it is not in itself legally binding. Therefore while an appeal to the traditional councils is normally cheaper this is done less often now than before the Second World War. As disenchanted and westernized litigants turn to the magistrates more and more frequently the traditional hierarchy of councils is proportionately sapped of the power to enforce its decisions.

[128] A case taken from my notes may help illustrate how an individual can nowadays try to manipulate the two judicial systems to disadvantage an opponent.[18]

159 691 692 Two brothers, Kallan and Jo:gi, lived together with their wives and children as a joint family in a Me:kuna:du village and, as was the custom, also held joint ownership of their land, each farming as much of it as he wanted. In 1948, Jo:gi, the elder brother, died leaving his two young children and wife in the care of Kallan. One of these children was a daughter who would leave the family at marriage and would not be entitled, under

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Badaga law, to any inheritance from her dead father. But Nandi, the dead man's son, would in time demand a half of the joint family's estate. Kallan knew this very well, for he could easily see how most joint families were breaking up into nuclear families; and he also recognized that with his wife, two sons and two daughters he would be making a much greater drain on the family resources than would Nandi and his mother. Kallan therefore decided soon after Jo:gi's death to secure title—under the Indian legal system—to much more than the half of the family land which he could justly claim when Nandi demanded its division, as he undoubtedly would in due course. Already arguments had arisen between Kallan and the widow over who should cultivate each part of the land.

Kallan realized that he could expect no support from his village council, for they would certainly take the just side of his victim, and Kallan himself was not wealthy or powerful enough to bribe them into doing otherwise. He therefore decided to get a legal agreement registered for transfer of land to himself without either the boy or his mother knowing about it. He mustered two men and one woman to act as witnesses, giving them handsome bribes for their services and secrecy. Two of them belonged to a different phratry than Kallan's, and all were unrelated to his family. At the land registrar's office in Coonoor, far from their village, the woman witness claimed that she was Jo:gi's widow, and that Kallan had loaned her some money against the security of about three-quarters of the land she had title to since her husband's death (i.e., on her son's behalf). The government official registered an agreement that if the sum of money supposedly lent her was not repaid within ten years the land would automatically become Kallan's property. The official did not investigate whether the woman really had any title or whether she was indeed Jo:gi's widow. As she could not write, she set her thumb-print to the document.

Kallan continued to let Jo:gi's real widow use the land she needed, hoping that she would die within the next ten years; and after eight years she did in fact pass away, presumably by natural causes. By this time her son Nandi had attained legal majority and soon found himself faced with the perennial problem of Badaga farmers, shortage of money. He went to the local co-operative society and obtained a loan of two thousand rupees against a pledge of two acres of what was assumed to be

2: Hockings E-4,5 (1962-1977) 1980
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159 his land. The co-operative society casually enquired if the land
691 was encumbered, but as nobody suspected that it was the loan
• 692 was granted.

That year Nandi's potato crop was ruined by disease, and he was unable to repay the loan within the stipulated time. The co-operative society thereupon made preparations to seize the two acres which Nandi had pledged; at which point Kallan decided to step in, as the land was covered by his spurious agreement. He even announced that he would sue the society in court for trying to seize land that legally belonged to him. This was the first time that Nandi and the village learned about the transfer agreement registered some twelve years earlier.

In revealing the existence of that document and telling Nandi that his mother had made the agreement while he was a small boy, Kallan failed to take note of one important fact: one of the men whom he had paid to act as false witness at the registration was now president of the co-operative society! This man, Madia, now did what seemed best for his society and—without mentioning his own role in the matter—tipped off Nandi about the falsity of Kallan's agreement. Madia advised the young man to take the case to the magistrate's court and charge Kallan with false representation. This would not be difficult, for the woman who had posed as Nandi's mother was still living, and her thumb-print could thus be checked with that on the document. Such a sophisticated method of proving the falsity of a document would be beyond the capabilities of the village council and would probably win scant support for Nandi's case there. (Undoubtedly Madia had his own reasons for not wanting the matter discussed in his village.) But unfortunately Nandi had no money to initiate a hearing in the magistrate's court. He did not take the matter to his own village council either, for he knew the council has little power left to enforce its decisions, and the likelihood was high that Kallan would be able to bribe its members.

Whether bribes were in fact given or not, the council did discuss the case some fifteen years ago and advised Nandi to repay the money his mother had supposedly borrowed from Kallan. This was their compromise solution, offering Kallan a financial inducement—the money which he had never really lent—and offering Nandi tenure of the two acres he had pledged and cancellation of Kallan's spurious agreement.

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159 691 ●692 Kallan was apparently willing to accept this, for he was now urging Nandi to repay the supposed loan but under no circumstances to go to a lawcourt. Now it is up to Nandi to solve the problem, still at stalemate in 1975. The solution which he chooses must be couched in the current ambilegal idiom. If he attempts a solution purely in the traditional idiom or purely in the lawcourt idiom, without taking into account the alternate system and Kallan's possible manipulation of it, then Nandi's chances of ultimate success are slim.

The point which the case of Kallan and Nandi underlines is that the introduction of British procedural law in the nineteenth century did not simply offer Badagas an alternative or more effective approach for solving conflicts in their community. The procedure in a lawcourt must have seemed capricious to a villager: it operated on the assumption that all individuals were equal before the law and that the proceedings must work directly towards a just decision; whether a man was a Torea or a member of the gentry was irrelevant to how he would be treated; his past history and his family's reputation were similarly not taken into consideration. To Kallan and Nandi, therefore, as to many of their Badaga contemporaries, the lawcourt is less a mechanism for dispensing impartial justice than a possible means of revenge and a process for overcoming one's opponent (regardless of who may actually be in the right). The use of a lawcourt can involve an 691 opponent in crippling legal costs, and the prospect of these costs 692 may frighten him into compliance with what is wanted of him. 578 Threatening to go to a lawcourt after receiving unfavourable treatment from the village council can also be used to undermine the authority of the elders and cast aspersions upon the village's respectability. For over a century Badagas have had a saying that runs: 'If you prefer a complaint to a magistrate, it is as if you had put poison into your adversary's food' (Metz, 1864, 92; Grigg, 1880, 224). The belief is still voiced today; but in the interim Badagas have learned how to apply the poison effectively.

POLITICAL CHOICE

646 For the past five decades Badagas have been elected to seats in the state legislature, and for the past three there have been Badaga Members of Parliament. In recent years (as an effect of earlier

2: Hockings E-4,5 (1962-1977) 1980
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capacity as village munsif [*manegar*] and Magistrate. He has to prepare reports, accounts, statements, etc., which it is necessary to put in writing . . .': Madras, 1958, 1.

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14. Thurston 1909, vol. I, 80. This unusual treatment was not obligatory and was rarely possible because a *manegar's* rounds were short and could not have kept him away from home at night. A *manegar* with a penchant for girls would quickly have lost his reputation.

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15. The India-wide term for a village council. The distinction between civil and criminal law is made explicit in the *Indian Penal Code*, which in this matter closely follows English common law.

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16. The *panchayat* members are supposedly elected every four years; their position is prestigeful but unpaid. The chosen representatives tend to be relatively well-educated but rarely village headmen. The powers of this court, which is at the lowest level in the hierarchy of lawcourts, are: '. . . to take cognizance of and try specified offences of a trivial nature and abetment of such offences committed within the local limits of their respective jurisdiction. Such offences are affray . . ., voluntarily causing hurt . . ., assault or using criminal force . . ., theft . . ., and mischief . . ., insult . . ., some nuisances . . ., and generally any other offence under the Indian Penal Code or any special or local law which is punishable with fine only or with imprisonment for a term not exceeding six months or with both.' Madras, 1958, 50.

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17. It is supposedly the headman's duty to decide whether a case should be taken before a magistrate.

18. This case remained unsettled in 1975 (all names used are fictitious).

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19. 'Satchit', 1940, 15; Dharmalingam, 1962; see Diagram 9. Just before his death H. B. Ari Gowder corrected what I have here written about his life.

In the course of the year almost every village celebrates a dozen or so festivals, the most important of which are concerned with the agricultural cycle: *doḍḍa habba*, the Great Festival, which marks the beginning of the agricultural year in November, and *de:va habba*, the God Festival, which celebrates the harvest in July. Another festival, called *Ma:ri habba*, intended to keep smallpox away, is celebrated in a few villages by fire-walking, when selected men walk unscathed across glowing embers. There are many other lesser ceremonies marking certain transitions in the lives of members of the community. For Badagas the major events of life are the naming of a child, its first haircut, the first milking of a cow, marriage, and death. On rare occasions some villages held a huge memorial ceremony in honour of a whole generation of the dead when its last member had passed away, but the ceremony was last performed in 1936. Yet many customs and celebrations of the Badagas are still observed today, in spite of dramatic changes which have affected other parts of their lives.

They are, for example, still led by a paramount chief whose position is hereditary and who always belongs to the village of Tu:ne:ri. (The latest chief was installed in 1977.) The political power devolves from this paramount chief to the headman of each village. In between them there are many local and regional headmen: several neighbouring villages make up a commune and, taking the name of the leading village, come under the authority of that village's headman. Above these there are also four regional chiefs who each control the villages and communes within their quarter of the Nilgiris.

Each headman has his own traditional council. A commune headman has the local village headmen in his council; a regional headman has the commune chiefs in his; and the paramount chief's council (which rarely meets) is composed of all the Badaga headmen. The judicial authority of all of these councils has been much diminished by the gradual imposition of Indian law and lawcourts. The traditional legal procedure for any dispute begins at the village level and then ascends through the various councils until finally an appeal may be considered by the paramount chief. In the past, headmen could impose severe punishments which ranged from ostracism to hanging, but today all criminal offences come under the authority of lawcourts, and village headmen and councils are left to deal only with minor disputes and ceremonial duties.

The Badagas are divided socially into a number of hierarchical

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Lovers and Prostitutes

3.6. Badaga girls used to be married shortly after puberty and youths in their late adolescence. Various social pressures, most importantly the new educational requirements, have increased these ages until today a girl gets married at about 16 and a young man in his early 20s. Since births are not registered it is possible for parents to claim their daughter is older than she really is at marriage: recent legislation about age at marriage (18 for girls, 21 for men) might sometimes prompt them to do so.

One effect of this raising of the appropriate age for marriage has been an increase in premarital sex activity among male youths. The corresponding phenomenon does not seem to have occurred among the girls, however; quite the opposite, in fact. I was told that a "double standard" has recently appeared, in that if an unmarried man is known to be having an affair he is not thought badly of, whereas if a young woman does so she is mocked by other villagers and considered very immoral. This development has come about since mid-century because of changing attitudes towards pregnancy. In earlier days an unmarried girl would have affairs without any great fear of pregnancy, because she knew that if she did become pregnant she could go before the village council, name the father, and he would be forced to marry the girl concerned. She only had to assert that a man was the father and he would have to marry and support her — even if he already had a wife. Should a man refuse to accept the council's decision on the matter he could be outcasted and ordered out of the village, his property divided among his brothers, and a share of it given to support the pregnant girl. This, rather than an abortion, was the normal procedure. Today an unmarried woman is very circumspect even if she has reached the age of 30. She knows that a ruined reputation can spoil her chances of an advantageous marriage, and the village council has little power to force a wayward man into marrying or supporting her today.

3.7. As with much else in Indian social organization, there is a hierarchy in the frequency and acceptability of extra-marital sexual partners, as outlined below.

(*a*) Most frequently chosen is a girl related as affine to a boy; they are a couple who might later marry without offence. Usually this means the girl would have to be of the same phratry but a different clan, and live in a different village from the boy's. If the parents

41 Hockings E-5 (1962-1977) 1980
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between the two, or between a father and his daughter, has often led to a divorce.

In the estimate of one good informant, when incest occurs within the family it is most often with an elder brother's wife, and less commonly with a son's wife or with the father's second wife when she is a man's stepmother. Mother/son, father/daughter and brother/sister relations are the rarest of all, if indeed they ever occur.

The above seven types of illicit relationship are listed in my informant's order, going from (*a*) the most common but least serious, to (*g*), the most uncommon and offensive. Despite the considerable amount of evidence collected on these various types, I was told by old people that it used to be thought a very bad thing for a husband to commit adultery, and if his wife or another person found out about it she would go to the village headman who would call a meeting of the council and then fine the guilty person: in adultery the man was always at fault.

Among Badagas the public attitude towards a cuckolded husband is that he is a foolish, weak and lazy man, for otherwise his wife could not have been led astray. However, his wife also loses all respect with the other village women, who may well fear that they could lose their own husbands to her too. Nor can the adulterous man expect any accolades for his behaviour. Today a case of adultery may go before a council, which can still fine the adulterer; or her husband may quietly divorce an adulterous wife; or he might give the adulterer a beating, provided he had some alternate explanation for it to offer his neighbours.

Attitudes towards extra-marital love and prostitution are clearly expressed in Badaga proverbs and legends. Witness the following still current proverbs: "Three things are equal to each other: a harlot, an adulterer, and a piece of ground which is always in danger of being washed away by a river" (Metz 1864: 97); "If the food is spoiled, the day is spoiled; if the wife is spoiled, one's life is spoiled;" "The immoral woman will not believe her own husband;" "The whoremonger will vanish away like a handful of wind" (Metz 1864: 98); and again, "Lust is deceitful, I have lost my blanket through it" (Metz 1864: 96). A few lines from an epic poem conjure up a vision of limbo that is worthy of Dante's *Inferno :*

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The hamlet council, together with the hamlet headman, is at the lowest
(631) stage in a hierarchy of traditional councils and headmen. Some examples of how these councils work will be given when we discuss the changes they have been subjected to during the present century. We will now explain the working of the hamlet council, however, in broad outline.

Any villager with a dispute must take the matter to his own hamlet headman
•692 first, for the consideration of the hamlet council. If the defendant is from another
(622) hamlet, the plaintiff's headman will approach the headman of the other hamlet and
(629) they will arrange a joint council. If one party becomes dissatisfied with the manner
(628) in which the hamlet council has handled the case, or if the hamlet council has been
(632) unable to reach a decision, the case can be passed on to the level of the "village"
692 council. As soon as the "village" headman hears about it, his first task is to
692 enquire whether the case has already been heard by the hamlet council; for, as with the official Indian legal system, no case can come before a higher court before it has passed through the lower-level court. The "village" headman calls together a council consisting of all the hamlet headmen of his "village", as well as various assistants to these headmen and perhaps a few other respected elders. This group
692 constitutes the council at the "village" level. In the same way, the divisional headman can call together a council of all the "village" headmen in his division, or the President of the Nilgiris can call a meeting of all the "village" headmen of all four divisions.

These last two steps are only taken on very rare occasions, especially in the present century, to settle factional disputes which have reached serious proportions without being resolved. The last such meeting was in June, 1957 (Dharma-

692 Lingam 1957). At each successive level in this process the headman will consider the decision of the previous lower-level hearings. Usually he will offer the same judgment, yet sometimes he may not only reverse the decision but also fine the headmen who have given a "wrong judgment". This right of the superior headmen is -- or, to be more accurate, was -- an important means of social control.

178 626 692 Until the end of the last century this system was functioning to the exclusion of the official Indian legal system, for no Badaga would risk the punishment of ostracism which could be expected for taking a case to a magistrate. A 19th Century Badaga proverb warned that, "If you take a complaint to a magistrate, it is as if you had put poison in your adversary's food". During the decades that this was in common use, there was a rigid set of punishments merited by specific crimes; and this was said to have replaced an earlier system of lex talionis in pre-British days. The Badagas would hang a man whom they had themselves found guilty of murder (unless the British officials heard about the case in time); for certain other severe crimes, including conversion to Christianity, ostracism or banishment was meted out. Apart from these punishments there were various demeaning and unproductive tasks that an offender might be ordered to perform; or his head might be shaved; or one of the standard fines could be levied. Among the Badagas of the 19th Century the only fines were in cattle, household items, foodstuffs, and coin to the value of Rs. 1/4, 1/2, 1, 3, 6, 12, 24, and 48. No intermediate or higher sums were demanded at that time; but in the present century the rates have increased and once a fine of Rs. 5000 (about $1060 U.S.) was levied by a Badaga council in a very serious case. There are detailed regulations for the fixing and payment of fines.

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648 The relationship between the communities of the plateau was not solely

648 been recorded; and there is no regular rate of fines to be levied from the guilty Badaga or Kurumba in such a dispute. This situation results from the fact that virtually all disputes between Badagas and Kurumbas involve Badaga accusations of Kurumba sorcery, accusations which are not likely to be met with equanimity or impartiality by either Badaga or Kurumba participants in a judicial council.

The traditional judicial council of the Kotas is close in form to the Badaga one: a village council convened by the Kota headman. There are no higher levels of the Kota council *per se*, because at the divisional or Nilgiri-wide levels the Kota villages "fit into" the Badaga system.

The organization of intertribal councils between Badagas and Kotas used to work very well, for it was essential that there should be no long-standing disputes between the two tribes. The presence of Kota musicians at Badaga funerals was (until 1928) felt to be obligatory, so that the threat of leaving a Badaga's obsequies uncompleted was itself enough to ensure the speedy settlement of current disputes. In any dispute between a Badaga and a Kota, the latter will still go to his Badaga partner in anticipation of his lending support to the Kota against the other Badaga; which is normally what happens.

Under some circumstances Badagas may help solve a purely Kota dispute, 648 692 or Kotas may settle a purely Badaga one. If two Kotas, for example, are in dispute, each may look to his Badaga partner for support (Mandelbaum 1955: 241). This is a very useful move to make, for the Kotas realize that (in the traditional situation) if the case is not settled in the Kota village council, it is then likely to go to the higher Badaga "village" council or, in some cases, to a divisional council which would also be preponderantly Badaga in its make-up. The Kota with the stronger support from Badaga friends feels that he is more likely to win the case,

given these circumstances. The actual constitution of the judicial council at any level, for Kotas as for Badagas, is very much a matter to be decided by plaintiff and defendant; certainly the headman must be a participant, but which of the other elders will take part is not necessarily fixed either by custom or by the headman. The counterpart of this situation is where two Badagas are involved in a dispute; and each may then go to his Kota partner in expectation of winning his support. The Kota partners of the two men might afterwards discuss the matter between themselves and try to bring the two Badagas to a compromise. Alternatively, the two Kota partners may quarrel between themselves over the matter, in which case it is then taken before the Kota headman. At this point the Kota headman is very likely to summon the hamlet headman of the two Badaga disputants, as well as the disputants themselves, and a council would be held at a stipulated time in the Kota village. It is worth noting that when any council — whether Badaga or Kota — discusses a case, the final judgment, although effectively a consensus or at least a majority view, is actually made by the headmen in charge, on the basis of the various arguments he has heard. Thus when such a council is meeting in a Kota village to hear a Badaga case, the Badagas are bound to accept the Kota headman's judgment; for if they tried to evade it afterwards they could incur the anger of all Kotas and thereby jeopardize the community interrelationship.

If a Badaga disputing with a Kota is fined, it will not be in cash but in male buffaloes, which the Badaga himself must drive to the Kota (where they will be killed and eaten). If it is the Kota disputant who is fined, he must pay the Badagas a stipulated amount of metal goods, generally axes. In either case the guilty man gives the fine to the headman of the other disputant's village, and not to the disputant himself.

615 number by intermarriage in one hamlet, they are now the only totally endogamous Badaga phratry. Their name suggests that they originated in an eponymous Kanarese community: "The Toreyas are a Canarese class, living chiefly in the Tamil districts of Coimbatore and Salem. They are said to have been originally fishermen and palanquin bearers, and the name is derived from turai, a river ghât. Most of them are now cultivators..." (Thurston 1909: VII, 176) The Badaga Toreyas are, like all other phratries, primarily cultivators. They do in addition hold a traditional role of messengers and "village servants" — even in Beda hamlets — whence their low status (Thurston 1909: I, 73-74). It seems likely that they used to be palanquin-bearers on the tortuous Nilgiri slopes until about 1830, when the roads were becoming suitable for cart traffic. Certain Toreyas are still appointed to run errands for the headmen, and to perform specific duties at festivals and some public ceremonies, particularly funerals. It is recorded that in the early part of the 19th Century they were also "weaving a kind of sackcloth" (Harkness 1832: 109); but today neither the Toreyas nor anyone else can recall anything of this craft.

615 •692 The Toreyas are under a disadvantage at the hands of the Badaga judicial system; for in any hamlet or "village" where the Toreyas do not live apart from all other phratries they find that, while they are permitted to bring cases to the council and to sit at the meeting, they must not take part in the discussion which leads up to the headman's decision.

162 614 615 There are 26 Toreya hamlets in the entire Nilgiris, most of them being adjuncts to Gauda hamlets. A census of the Toreya settlements reveals an extraordinary disproportion in the sizes of the two exogamous sibs. 5½ hamlets are inhabited by one sib, and 20½ by the other. In approximate figures this means that 125 households belong to one sib, while 750 belong to the other. This situation is necessarily a temporary one, and can have persisted for only two or three

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The Present "Ambi-legal" System in Badaga Villages

692 It will be recalled that in an earlier chapter which described the traditional social organization of the Badagas we spoke of a politico-juridical system which linked the Badagas closely to the Kotas, and provided for the settlement of disputes by a hierarchy of local councils (pp. 29-43). Today, while this system still remains in operation for "civil" cases, it is very common for Badagas also to make use of the official legal system of India in the settlement of disputes and [829] the punishment of crimes. Since the use of both systems is not seen by the villager as a clear matter of choice, but rather of trying to play one system off against the other so as to maximize his own advantages, we might characterize the present Badaga situation as being an "ambi-legal" one. Let us take as our point of departure for an analysis of this phenomenon the changing role of the Badaga headmen.

175 692 [648] To understand the role of the village headman in local government one needs to know that after the British arrived in the Nilgiris (in 1820) they perpetuated village government through the previously existing hereditary headmen, and bestowed upon these men the title of <u>manegar</u>. The <u>hierarchy</u> of these headmen did not come into the British plan for local government, however: <u>manegars</u> were typically "village", and not hamlet or divisional headmen. From the end of the 632 [622] last century the headman role has been divided up: a <u>manegar</u> was appointed in major villages -- generally the chief hamlet of an indigenous "village" grouping -- by the British District Collector (Grigg 1880: 366); but the Badagas still selected their own hamlet headman (who then received the title of <u>sub-manegar</u> and continued to receive a small salary from the British administration). The <u>manegar</u> appointed was preferably a literate man rather than simply a prestigeful one; though

632 In the earliest days of the British régime it was enough for the manegar to be a man of the gentry respected by the Badagas (Grigg 1880: 336). In addition to him, the British appointed a Badaga as accountant or karnam to keep records. Both of these roles -- held by Badagas appointed by and responsible to an outside authority -- were new to Nilgiri society. So was the idea of electing a council; but a supposedly elected panchayat (the India-wide term for a village council) became the official instrument of local government shortly after the First World War. Its functions today are to provide various facilities, notably the up-keep of roads and paths, water supply, community radio, the maintenance of land records and birth and death registers, and the supplying of information about various aspects of government activity.

The roles of the two key positions in a government panchayat are officially stated to entail the following:

> The head of the village [i.e. manegar] is the representative of Government in the village. He is the village magistrate and head of the village police. He is the collector of the revenue of the village over which he presides, and has also to perform [miscellaneous small] duties...
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> The karnam, who is entrusted with the keeping of village accounts, is subordinate to the head of the village. He should help and advise the head of the village in every way. He is the clerk of the head of the village in his capacity of village munsif [i.e. manegar] and Magistrate. He has to prepare reports, accounts, statements, etc., which it is necessary to put in writing... (Madras 1958: 1)

Despite the setting-up of village panchayats and the appearance of a state police force in some Nilgiri villages, the organization of celebrations and the settlement of disputes have remained very much in the hands of the traditional headman, his festival committee, and his council. Criminal cases must be reported to the police and are usually handled in a court of law, but civil and petty criminal cases can either be settled by the Badaga council or can go before an official panchayat court. (The distinction between civil and criminal cases is

made explicit in the Indian Penal Code, which in this matter closely follows English common law.)

This confusing situation in effect exposes the Badagas to three different legal systems: their own indigenous one, still remembered and influential in establishing precedents; the present-day Badaga village council, which settles disputes according to a majority opinion (although the headman's own decision is really the final one), an opinion modified by the knowledge that the case might then be taken, together with the decision, before a court of law; and finally there is the hierarchy of government lawcourts.

At the lowest level in this hierarchy of lawcourts is the government-sponsored panchayat court. Its powers are outlined in the following quotations from official regulations (which are still in force):

> Section 10 of Regulation XI of 1816.
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> First.--In cases of a trivial nature, such as abusive language and inconsiderable assaults or affrays, heads of villages shall have authority, on a verbal examination, either to dismiss the parties, or, if the offence charged shall be proved to have been committed by the persons accused of it and shall appear deserving of punishment, to confine the offending parties in the village choultry [i.e. shelter] for a time not exceeding 12 hours...
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> Section 6 of Regulation IV of 1821.
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> First.--The powers granted to heads of villages.... to punish trivial offences, have been extended... to the punishment of petty thefts not attended with aggravating circumstances nor committed by persons of notoriously bad character, and where the value of the property stolen does not exceed one rupee... (Madras 1958: 46)

Panchayat courts may, in addition to the powers to try petty civil suits of specified nature, be invested by the State Government with the power to take cognizance of and try specified offences of a trivial nature and abetment of such offences committed within the local limits of their respective jurisdiction. Such offences are affray (section 160, Indian Penal Code), voluntarily causing hurt (sections 323 and 334, Indian Penal Code), assault or using criminal force (sections 352 and 358, Indian Penal Code), theft (section 379, Indian Penal Code) and mischief (section 426, Indian Penal Code), when the value of [the] property stolen or damaged does not exceed Rs. 10 or if the Government so direct Rs. 20, insult (section 504, Indian Penal Code), some

692 671 [681] [685] nuisances under the Indian Penal Code (sections 277, 283, 290 and 510) and the Madras Towns Nuisances Act, and generally any other offence under the Indian Penal Code or any special or local law which is punishable with fine only or with imprisonment for a term not exceeding six months or with both.

The sentence which a panchayat court may pass is [a] fine not exceeding Rs. 15, except in cases of theft or mischief where the fine may extend to twice the value of the property stolen or the amount of damage caused. (Madras 1958: 50)

121 Since such a multiplicity of courts, officials, regulations and legal systems now faces a Badaga, how does he select where to go with a legal complaint? There are a number of factors that guide his handling of the problem.

692 The prime consideration is apparently not the seriousness of the complaint but the good repute of a man's own village. I know of several cases of murder and suicide which were handled entirely by the traditional Badaga council in the village where the acts were committed. This procedure contravenes Indian law, since any such criminal offences should automatically be reported to the police and if necessary be examined in a magistrate's court. [632] (It is supposedly the headman's duty to decide whether a case should be placed before a magistrate.)

692 829 Badagas, on the other hand, whether siding with the victim, the malefactor, or neither, prefer that all such matters be cleared up by the headman and his council without the village name being marred through a police investigation and loose gossip. For the same reason they also try to stop the case going on to the next higher level of council in their own traditional system.

691 692 Despite this state of affairs, it is very common for a case which has already been judged by the village council to be taken to a court of law by whichever side has lost; hence we characterize the present procedure as "ambi-legal". The practice has arisen because it is widely known that the decisions of a traditional village council are not legally binding and are often not very impartial either. On

691 the other hand there are two factors which militate against the loser going to a
•692 magistrate with his case: one is the cost of a solicitor and of bribing various petty officials; the other is the common knowledge that the previous decision of the village council can be brought forward as evidence in court, whereupon in something like "98% of cases" (in the estimate of one experienced informant) the magistrate will simply hand down exactly the same decision as the village council's.

An alternative route for appeal against a decision is the hierarchy of traditional councils. Although this is normally less expensive, it is being followed less often now than before the Second World War. As disenchanted litigants use the magistrate's court more and more frequently, the power of enforcing its decisions that rested with the traditional hierarchy of councils is proportionately sapped.

Badaga litigants, we have suggested, find themselves in what can be called an "ambi-legal" situation. A case taken from my field-notes may help illustrate how the individual may nowadays manage to manipulate the two judicial systems so as to disadvantage an opponent. (This case remains unsettled; all names are fictitious.)

"Two brothers, Kallan and Jogi, lived together with their wives and chil-
159 dren as a joint family and, as was the custom, also held their land in joint owner-
685 ship, but each farmed as much of it as he wanted to. In 1948 Kallan, the elder
691 brother, died leaving his two young children and wife in the care of Jogi. One of
(592) these children was a daughter, who would leave the family at marriage and would
(423) not be entitled, under Badaga law, to any inheritance from her dead father. But Ranga, the dead man's son, would in time become a man and would then demand a half of the entire joint family's estate. Jogi knew this very well, for he could

159 Kallan's widow at all; and the agreement stated that if the sum of money supposedly
685 lent her was not repaid within ten years, the land would automatically become
691 Jogi's property. As the woman who pretended to be Kallan's widow could not write, she set her thumb-print to the document.

"Jogi continued to let Kallan's real widow use the land she needed, without ever letting her suspect that any such document existed. He of course hoped that she she would die before the ten years expired; and after eight years she did in fact pass away, presumably (though not certainly) by natural causes. By this time her son Ranga had attained his legal majority, and soon found himself faced with the perennial problem of the Badaga farmer, shortage of money. He went to the local Cooperative Society and obtained a loan of Rs. 2000 against a pledge of two acres of what he assumed was his land. The Cooperative Society enquired if the land were "encumbered", i.e. already pledged, but nobody suspected that in fact it was and so the loan was granted.

"That year Ranga's potato crop was ruined by disease, and so he was unable to repay the loan within the stipulated time. The Cooperative Society thereupon made preparations to seize the two acres which Ranga had pledged; but Jogi decided it was time for him to step in, as the land was part of that included in
• (692) his spurious agreement. To make the most of the situation, Jogi announced that he would sue the Society in court for trying to seize land that legally belonged to him and not to Ranga at all. This was the first time that the transfer agreement, registered some twelve years before, was heard about by Ranga and the village.

"In bringing the existence of that document into the open, and in telling Ranga that his own mother had made the arrangement while Ranga was a small boy, Jogi had failed to take note of one important fact: one of the men whom he

159 had paid to act as a false witness at the registration of the document was now
685 President of the Cooperative Society! This man, Madia, now did what seemed
691 best for his Cooperative Society, and -- without mentioning his own role in the matter -- he tipped off Ranga about the falsity of Jogi's agreement. Madia advised
159 the young man to take the case to the magistrate's court and charge Jogi with false
685 representation. This would not be a difficult thing to do, as the woman who had
691 posed as Ranga's mother was still living, and it would therefore be possible to
692 check her thumb-print with that on the document. Such a sophisticated method of proving the falsity of the document would be beyond the capabilities of the village council, and would probably win little support for Ranga's case there. (Presumably the President of the Cooperative Society had his own reasons for not wanting the matter discussed in his own village either!) But unfortunately Ranga had no money available at that time to initiate a hearing in the magistrate's court, and so there was nothing he could do. He did not take the matter to his own village council either, because he knew that today the council has little power to enforce its decisions; and the likelihood that Jogi would be able to bribe members of the council was too high to make this course of action palatable to Ranga.

"Whether bribes have in fact been given or not, though, the village coun-
159 cil has now discussed the case and is advising Ranga to repay the money his mother
695 supposedly borrowed from Jogi. They are thus trying to make a compromise of the situation, offering Jogi a financial inducement -- the money which he had never really lent -- and offering Ranga tenure of the two acres he has pledged and cancellation of Jogi's spurious agreement. Jogi for his part is apparently willing to accept this, for he is now urging Ranga to repay the amount of the supposed loan, and not under any circumstances to take the case to the magistrate's court. But it

159 is now up to Ranga to solve the problem."

695 The solution which Ranga chooses must be couched in the current ambi-

159 legal idiom. If he attempts a solution purely in the traditional idiom or purely in

•692 the lawcourt idiom, without taking the alternate system and Jogi's possible manipulation of it into account, then Ranga's chances of ultimate success are slim.

177 The point which the case of Jogi and Ranga underlines is that the intro-

671 duction of British procedural law in the 19th Century did not simply offer the Bada-

692 gas an alternative approach for solving conflicts in their community. To any

829 Badaga the procedure in the lawcourt must have seemed capricious: it operated on the assumption that all individuals were equal before the law, and that the proceedings must work directly towards a just decision; whether a man was a Toreya or a member of the gentry was irrelevant to how he would be treated; his past history and his family's reputation were similarly not taken into consideration when the specific case came before the court. To Jogi and Ranga, therefore, as to many

578 691 692 of their Badaga contemporaries, the lawcourt is less of a mechanism for dispensing justice than a possible means of revenge and a process for overcoming one's opponent (regardless of who is actually in the right). The use of a lawcourt can involve an opponent in crippling legal costs, or the threat of these costs may frighten him into compliance with what is required of him. The threat of going to a lawcourt after one's case has received unfavorable treatment at the hands of the village council can also be used to undermine the authority of the elders on

578 691 that council and cast aspersions upon the honor of the village. For over a century the Badagas have had a saying that runs: "If you take a complaint to a Magistrate, it is as if you had put poison into your adversary's food" (Grigg 1880: 224). The belief is still voiced today; but in the interim Badagas have learned how to

121 specialists. The Nilgiri tea and coffee growers have become integrated into the
178 South Indian cash economy at the expense of such traditional relationships.
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The trend toward diversification of the economy in the "dry" village which Epstein studied, and toward its greater integration with the regional economy, was
121 accompanied by changes of a political nature. Some villagers began to take part in political meetings in the town, and to elect their panchayats rather than accept hereditary incumbents. The change was not paralleled in the irrigated village which Epstein studied, however: there the traditional hereditary panchayats remained in operation, and there was relatively little concern with state political movements. The elected panchayat of the "dry" village does not settle disputes now: these are generally taken to court in Mandya. The traditional panchayat does settle disputes in the irrigated village, however.

632 Among Badagas, as we have seen, there are now elected panchayats which act as the organs of local government in providing basic rural facilities. The traditional panchayats are more influential in the control of behavior and the organization of festivities, however. Membership of the latter is sometimes hereditary and sometimes "selected"; often a single council has members designated by both pro-
● 682 cesses. The magistrate's court is now widely used in settling disputes; but at the same time the traditional council still has an important part to play in this activity.

121 Factions are not rigidly opposed in the irrigated village that Epstein studied. She regards them as "a mechanism whereby economic status may be translated into political influence" (1962: 320). As such they have changed little in their significance since the days before irrigation was available. In the "dry" village, on the other hand, factions "display the basic cleavage between innovators and conservatives" (Epstein 1962: 320). In summary, "Economic change in [the "dry"